

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE ("Lease") is made and entered into as of the ____ day of _____, 2011 ("Effective Date") by and between the **CITY OF TEMPE**, a municipal corporation ("Landlord"), and ZARCALRES TEMPE, LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant are entering into this Lease pursuant to that certain Development Agreement dated June 18, 2004 and recorded June 28, 2004 as Instrument No. 2004-0730290, Official Records of Maricopa County, Arizona, as amended by the First Amendment to Development Agreement dated June 16, 2005 and recorded July 25, 2005 as Instrument No. 2005-1041108, Official Records of Maricopa County, Arizona (the "First Amendment"), the Second Amendment dated January 19, 2006 and recorded February 10, 2006 as Instrument No. 2006-0194908, Official Records of Maricopa County, Arizona (the "Second Amendment"), the Addendum dated July _____, 2011, and recorded July _____ as Instrument No. _____, Official Records of Maricopa County, Arizona (the "Addendum"), and the Modification Agreement dated August _____, 2011, and recorded August _____, 2011 as Instrument No. _____, Official Records of Maricopa County, Arizona (the "Modification Agreement") (the Development Agreement, the First Amendment, the Second Amendment, the Addendum, and the Modification Agreement are hereafter collectively referred to as the "Development Agreement"). Portions of the Development Agreement have been assumed by Tenant pursuant to the Assumption Agreement, dated August ____, 2011, and recorded August ____, 2011, as Instrument No. _____, Official Records of Maricopa County, Arizona.

B. Landlord has title of record to the land and buildings, which comprise the improvements constructed on said land, described in **Exhibit A** hereto, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Premises"). The Premises consist of a residential rental development consisting of (i) two (2) buildings of approximately 386,644 square feet of building space ("Phase I" and "Phase II"), and (ii) a parking garage. The exclusive right to use 64 parking spaces within the parking garage has been granted to Landlord pursuant to the terms and conditions of the Development Agreement (defined herein), and as more particularly set forth in that Permanent Parking Use License Agreement executed as of _____, 2011 (the "Parking License").

C. The Premises are "Government Property Improvements" under A.R.S. §42-6201(2), Landlord is a "Government Lessor" under A.R.S. §42-6201(1), and Tenant is a "Prime Lessee" under A.R.S. §42-6201(4).

D. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). The construction of the Premises resulted in an increase in property value of at least one hundred percent.

E. The Premises will be subject to the Government Property Lease Excise Tax as provided for under ARS §42-6202 (the "GPLET"). Pursuant to the Development Agreement, Landlord will abate the GPLET for the period beginning upon the issuance of the certificate of occupancy for the Premises and ending eight years thereafter, all as provided in A.R.S. §42-6209(A).

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the annual Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the Term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for _____ years, commencing on the Effective Date and ending at midnight on the _____ anniversary of the Effective Date, subject to earlier termination as provided herein ("Lease Term" or "Term").

3. Rental. Tenant covenants to pay to Landlord annual rent (the "Rent") in an amount equal to 50% of the sum of (a) the product of (i) the Limited Property Value of the Premises for the then-current tax year (as determined by the Maricopa County Assessor's Office), (ii) ten percent (10%), and (iii) the aggregate primary tax rate for the then-current tax year for all primary tax jurisdictions in which the Premises is located (according to the Maricopa County Treasurer's Office), plus (b) the product of (i) the Full Cash Value of the Premises for the then-current tax year (as determined by the Maricopa County Assessor's Office), (ii) ten percent (10%), and (iii) the aggregate secondary tax rate for the then-current tax year for all secondary tax jurisdictions in which the Premises is located (according to the Maricopa County Treasurer's Office). During the first three (3) years after the Rent Commencement Date ("Initial Rent Period"), Tenant shall not be required to pay more than \$100,000.00 toward the Rent. If (A) the total amount paid toward the Rent by Tenant during the Initial Rent Period is less than (B) the actual Rent which would have been due during the Initial Rent Period, but for the foregoing limitation, then the difference (the "Deferred Rent") shall be amortized over the next five (5) years (the "Amortization Period") and be payable as hereafter stated. The amount of Deferred Rent remaining to be paid is hereafter referred to as the "Remaining Deferred Rent." The Deferred Rent shall be added to the amount of Rent due each year during the Amortization Period, and shall be payable in quarterly installments with, and in addition to, each installment of Rent, commencing on the first Rent payment date of the fourth (4th) year after the Rent

Commencement Date. The Remaining Deferred Rent shall be payable in full upon any termination of the Lease prior to the expiration of eight (8) years after the Rent Commencement Date. The valuations used to calculate the Rent shall be for the entire Premises, inclusive of all improvements, including but not limited to retail, garage and condominium parcels. In addition to the Rent, Tenant shall pay all applicable taxes (including use and transaction privilege tax on the Rent), and all other impositions, assessments, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. Rent shall commence on the Effective Date ("Rent Commencement Date"), and shall be paid in equal quarterly installments. The first quarterly installment of the Rent for the first year of the Term shall be payable on the Effective Date, with each quarterly installment payable every three (3) months thereafter. The amount of Rent for the first year of the Term shall be calculated using the assessed valuations for the 2011 calendar year, as determined by the Maricopa County Assessor's Office and the most recently available tax rates, as determined by the Maricopa County Treasurer's Office, as though the Premises were subject to ad valorem property tax. The amount of Rent for each subsequent year of the Term shall be calculated on the anniversary of the Rent Commencement Date using the assessed valuation for the next succeeding calendar year (thus, for example, the Rent for the second year of the Term will be based on the 2012 assessed valuations and tax rates). Tenant may contest the valuations determined by the Maricopa County Assessor's Office in accordance with the procedures set forth in Section 5.5. Rent shall be prorated on a quarterly basis for any partial lease-year at the end of the Lease Term.

Tenant shall, as provided under the Modification Agreement, pay, as additional Rent, any unpaid Deferred Development Fees (as defined in the Modification Agreement) which pursuant to the terms of the Modification Agreement is required to be paid beginning on the eighth (8th) anniversary of the Rent Commencement Date ("Additional Rent"). Such Additional Rent shall be paid in thirty-two (32) equal quarterly installments, beginning with the Rent installment due on the eighth (8th) anniversary of the Rent Commencement Date, payable at the same time and in the same manner as Rent hereunder, provided that the unpaid balance of such Additional Rent shall be payable in full upon any termination of the Lease prior to the expiration of sixteen (16) years after the Rent Commencement Date.

Rent (including Deferred Rent) and Additional Rent shall be payable in addition to all other sums payable under the Lease or the Development Agreement referenced in Recital A, if any. Notwithstanding any other provision of this Lease, Tenant shall not be entitled to any abatement of Rent, Additional Rent, or other amounts payable under this Lease if the Premises are damaged or destroyed or otherwise become untenantable during the Lease Term.

Rent shall be forwarded to Landlord at:

City of Tempe
31 East Fifth Street
Tempe, AZ 85281
Attn: Alex Smith

4. Leasehold Mortgage of Premises.

4.1 Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Taxes; Lease Obligations.

5.1 Government Property Lease Excise Tax. As required under A.R.S. § 42-6206, Tenant is hereby notified of its potential tax liability under the GPLET provisions of A.R.S. § 42-6201 through 42-6209, as now or hereafter amended. Failure by Tenant to pay the GPLET after notice and an opportunity to cure could result in divesting Tenant of any interest in or occupancy of the government property improvements to which this Lease applies. However, Landlord hereby abates Tenant's obligation for the GPLET for the Premises pursuant to A.R.S. § 42-6209 for the eight (8) year period commencing on the issuance of the first certificate of occupancy for Phase II of the Premises. Landlord acknowledges receipt of Tenant's application for such abatement. Landlord agrees to take any additional action requested by Tenant and which Tenant deems to be reasonably necessary for the Premises to qualify for GPLET treatment during the full Lease Term, including, without limitation, the eight (8) year GPLET abatement. Landlord and Tenant agree that the GPLET rates applicable to the Premises, notwithstanding the eight (8) year GPLET abatement, will be the rates set forth in A.R.S. 42-6203(A)(1) as of the Commencement Date ("Existing Rates"). If for any reason, the Premises are subject to rates other than the Existing Rates, and Tenant believes that it is not receiving the level of benefit contemplated when the Lease was executed, Landlord and Tenant shall meet to determine whether in good faith an equitable adjustment should be made to the Rent; if the parties agree on such an adjustment, they shall promptly execute an amendment of this Lease setting forth their agreement in this regard.

5.2 City Owned Parking Spaces. Landlord and Tenant acknowledge and agree that the City of Tempe has the permanent and exclusive right to use 64 parking spaces within the parking garage constructed on the Premises, and is therefore the owner and operator of such 64 parking spaces. Pursuant to A.R.S. § 42-6208(14), Landlord shall not levy and Tenant shall have no obligation to pay the GPLET with respect to such 64 parking spaces.

5.3 Other Taxes. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the Term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to

the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as “additional rent.”

5.4 Enhanced Services District Assessments. Tenant acknowledges that the Premises is located within an Enhanced Services District. Provided that the Premises would otherwise be subject to the assessment for such Enhanced Services District, that would normally be collected along with property taxes, Tenant shall pay to Landlord all amounts that would have been assessed against the Premises by reason of its inclusion in the Enhanced Services District. Such amounts, if any, shall be paid semiannually, within thirty (30) days after Landlord delivers to Tenant a written request for payment of such amounts.

5.5 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest. Tenant shall not, in the event of and during the bona fide prosecution of such protest or proceedings, be considered in Default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.6 Procedure. Landlord agrees that any proceedings, contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder, or contesting the assessed valuations as though the Premises were subject to ad valorem property tax, may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the Lease Term, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.7 Allocation. All payments contemplated by this Section 5 shall be prorated for partial calendar quarters at the beginning and at the end of the Lease Term.

5.8 New Proposed Enhanced Services District. Pursuant to ARS §48-575, Landlord may hereafter form an enhanced municipal services district for the currently proposed street car project. Landlord agrees to provide Tenant with one hundred twenty (120) days prior written notice of the Landlord’s intention to form such enhanced municipal services district, which shall include an estimate of the proposed assessment. Provided that the Landlord meets the above notice requirements, and provided further that Tenant (or its successor) has not delivered to Landlord written notice of its intent to terminate this Lease, Tenant (i) agrees to support formation of such district and cooperate with and assist Landlord in forming such district, and (ii) authorizes Landlord, as the holder of fee title, to take such actions as are necessary to approve the district and any assessments to be levied by the district without further authorization from or approval by Tenant.

6. Use. Subject to A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

7.2 disruption in the supply of services or utilities to the Premises;

7.3 maintenance, repair or restoration of the Premises; or

7.4 any other cost, expense, duty, obligation, assessment, service or function related to the Premises.

Nothing set forth herein waives or otherwise modifies the City of Tempe's obligations as a municipality to provide municipal services and municipal utilities to the Premises in accordance with the requirements applicable to the provision of such services.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without the prior written consent of the occupant or as provided by law.

9. Alterations. Tenant shall have the right, without the requirement of Landlord's consent, to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall include all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialman's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises, or any property located thereon, as a result of Landlord's status as the owner of the Premises and Landlord under this Lease. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. Title to all improvements, alterations, additions and other changes shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, when not in material default hereunder, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all

other instruments requested by Tenant with respect to Landlord's status as fee title owner of the Premises, and perform all other acts reasonably necessary or appropriate to the development, construction, razing, redevelopment or reconstruction of the Premises.

11. Insurance. During the Lease Term, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the Term shall not be less than \$5,000,000.00 combined single limit. The minimum policy limits shall be reviewed periodically by Landlord's Risk Manager, and may be increased as reasonably necessary, after not less than 30 days prior written notice to Tenant, so as to be in an amount customarily provided for similar types of facilities and uses. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment), provided, however, that if Tenant's insurance carrier refuses to provide such an endorsement, Tenant shall immediately notify Landlord of any notices received by Tenant relating to any potential event of cancellation or nonrenewal, and the failure to obtain such endorsement shall not be a Default hereunder. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Subject to the provisions of the Parking License, and except for any claims and liability which could have been asserted against Landlord if Landlord were not the owner of the Premises or if Landlord were not a party to this Lease, Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the Lease Term or any extension hereof, or any occupancy hereunder, Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees, or as a result of the use by Landlord, or any of its sublicensees of the Premises pursuant to the Parking License (with such liability, loss, costs and obligations to be governed by the terms and conditions of the Parking License). Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease for a period of six (6) years.

13. Fire and Other Casualty. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense (subject only to the provisions

of any Leasehold Mortgage), may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds (subject only to the provisions of any Leasehold Mortgage), whether or not Tenant rebuilds or repairs the improvements or fixtures.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term, this Lease shall terminate with respect to the part of the Premises so taken, and, subject to the applicable provisions of this Lease and the provisions of any Leasehold Mortgage, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant (subject only to the provisions of any Leasehold Mortgage) all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Premises. Notwithstanding the foregoing, Landlord shall retain any claims it may have relating to the loss of Rent, provided that the condemnation is not initiated or prosecuted by Landlord or at the request of Landlord.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the Lease Term shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the Premises or Tenant's leasehold estate or any part thereof, or the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the

condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. Tenant or its successor, including any successor to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), shall have the option, exercisable by written notice to Landlord, for any reason or for no reason, to terminate this Lease (the "Option"), with such termination becoming effective upon the later to occur of: (i) the payment in full all Rent, then due and payable under this Lease (as described in Section 3), including the Remaining Deferred Rent, if any, or (ii) sixty (60) days after the date of such written notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant or Tenant's successor, as the case may be, and Landlord shall comply with its obligations under Article 20.

15.2 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4(a), Tenant may not exercise, terminate, modify or waive its Option under this Section 15 without the prior written approval of the Leasehold Mortgagees, and Landlord will not recognize, accept, or consent thereto without such approval.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right to assign this Lease and Tenant's interest herein or to sublease all of or any part of the Premises to any person or persons, without the consent of Landlord.

16.2 Liability. Each assignee shall assume in writing all of the obligations of the Tenant under this Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and that Landlord shall accept performance by any such subtenant or assignee.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. Each of the following is a "Default" under this Lease: (a) the failure to pay Rent or other sums required to be paid by Tenant under this Lease within five (5) business days after the date due; (b) a general assignment by Tenant for the benefit of creditors; (c) any action taken or suffered by Tenant as a debtor under any insolvency or bankruptcy act; (d) Tenant's failure to maintain in force all insurance coverage required under Section 11 of this Lease or Tenant's failure to deposit evidence of insurance with Landlord as required by this Lease; (e) Tenant's failure to comply with any applicable local, county, state or federal law, rules or regulation affecting the Premises, including but not limited to, the Americans With Disabilities Act; or (f) Tenant's failure to observe or perform any other covenant, condition or agreement set forth in this Lease; or (g) a Default by Tenant under, and as defined in, the Parking

License, provided that such Default results in Licensee or Licensee Designees (as defined in the Parking License), as applicable, not having access to the Parking Spaces (as defined in the Parking License). With respect to Defaults arising under item (a), other than the payment of Rent, Tenant shall have a period of 10 business days after notice from Landlord in which to cure any such event and if Tenant timely does so then Tenant shall not be deemed to be in Default. With respect to Defaults arising under items (b) through (f), Tenant shall have a period of 30 business days after notice from Landlord in which to cure any such event; provided, that if the Default is of a nature that reasonably cannot be completely cured within 30 business days with the exercise of due diligence, then if Tenant timely commences the cure within such 30-business day period, and completes it with reasonable diligence and good faith, then Tenant shall not be deemed to be in Default.

17.2 Remedies. Upon the occurrence of any Default by Tenant and its continuance beyond any applicable grace or cure period set forth in Section 17.1, subject to the rights, privileges and protections granted to Leasehold Mortgagee pursuant to this Section 17 and Section 18 hereof, Landlord shall have the right and option to pursue all remedies available to it at law or in equity, provided, however that Landlord shall have the right to terminate this Lease only with respect to a Default under paragraphs (a), (d), and (g) of Section 17.1, and with respect to a Default under paragraph (e) of Section 17.1 that is a threat to public safety. Any such right to terminate shall be exercised by Landlord, subject to the notice and cure provisions of Section 17.1, through the delivery of written notice to Tenant and all Leasehold Mortgagees, in which case the Premises shall be subject to the provisions of Section 20.

Landlord shall have a lien, which shall be subject and subordinate to the lien of any Leasehold Mortgagee, on all property of Tenant kept or used on the leased premises, whether the same is exempt from execution or not, to secure payment of any and all moneys then due or thereafter becoming due to Landlord under the terms and conditions of this Lease.

Any amount of Remaining Deferred Rent and Additional Rent not paid within five (5) business days after the date due shall become a lien on the Property, until paid. Landlord may perfect such lien through the recording of a "Notice of Lien" which shall set forth (a) the legal description of the Property, (b) the amount claimed as of the date of the recording, and (c) the name and address of Landlord. Before recording the Notice of Lien against the Property, Landlord shall make a written demand to Tenant for payment of the unpaid balance of the Remaining Deferred Rent or Additional Rent, as applicable. If such unpaid balance is not paid within five (5) business days after delivery of such demand, Landlord may record the "Notice of Lien."

It is expressly understood (i) that time shall be of the essence; (ii) that the failure of Landlord to exercise any right hereunder shall not constitute a waiver of any other or further default of Tenant, including any other or further default in the payment of Rent when due; and (iii) except as provided in this Section 17.2, the enumeration herein of express rights, options and privileges shall not limit Landlord thereto nor deprive Landlord of any other remedy or action or cause of action by reason of any default of Tenant, notwithstanding termination of Tenant's right to possession.

Tenant shall pay Landlord for all costs and expenses, including reasonable attorneys' fees and interest on all sums due at the rate of 15% per annum, compounded daily from each due date until paid in full, incurred by Landlord in connection with the recovery of any Rent due and unpaid under the terms of this Lease.

This section constitutes the provision required under A.R.S. §42-1931(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

17.3.1 No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

17.3.2 If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

17.3.3 If Tenant fails to cure a default within the applicable cure period, then the Leasehold Mortgagee shall have the right for a period of sixty days after the later of written notice to the Leasehold Mortgage that Tenant has so failed to cure and the end of the applicable cure period to perform any term, covenant, or condition and to remedy any default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. Landlord agrees that the Leasehold Mortgagee shall not be required to pay default interest to effect a cure of any payments defaults by Tenant. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

17.3.4 In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

(a) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(b) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (a) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (b) above, if and when such Default has been cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, a default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed a Default hereunder.

17.3.5 If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs 17.3.4(a) and (b) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

17.3.6 No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

17.4 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or

Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

17.5 Liability of Leasehold Mortgagee. If any Leasehold Mortgagee becomes the Tenant hereunder, by Foreclosure of the Leasehold Mortgage, or under a new Lease under Section 18 below, the parties agree and acknowledge such Leasehold Mortgagee shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to any prior Tenant, such Leasehold Mortgagee shall only be liable and responsible for acts, omissions, defaults, breaches or events occurring while it is Tenant, but the prior Tenant(s) shall not be released from liability for prior occurrences. Nothing set forth in this Section 17.5 limits or otherwise modifies Landlord's remedy under Section 17.2 to terminate this Lease for certain Defaults, subject to Leasehold Mortgagee's right to cure a Default in accordance with the provisions of this Section 17, and right to enter into a new lease in accordance with the provisions of Section 18.

18. New Lease.

18.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

18.1.1 Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

18.1.2 Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys fees, which Landlord shall have incurred by reason of such termination;

18.1.3 Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

18.1.4 The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 18 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee title to the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by the termination of this Lease.

18.2 No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section or to cure any default of Tenant referred to above.

18.3 Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Section, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

18.4 Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in this Section, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

18.5 Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

19. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

20. Surrender, Reconveyance.

20.1 Reconveyance on Termination or Expiration. On the last day of the term of this Lease or upon any earlier termination of this Lease, whether under Article 15, Article 17, or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant or its successor, or Tenant's successor by Foreclosure, as the case may be, provided, however, that such automatic vesting shall not occur for any termination of this Lease if a Leasehold Mortgagee exercises its rights under Section 18.1 and enters into a new lease as described therein, or until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 18, or until the period therefor has expired. Without limiting the generality of Section 18.1, such new lease shall include this Section 20 which will allow the title to the Premises to vest in Leasehold Mortgagee, as the new Tenant thereunder, or any successor in interest to such Leasehold Mortgagee, upon the expiration or other termination of such new lease.

20.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a deed or bill of sale reconveying all of Landlord's right title and interest in the improvements to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in Tenant or its successor, or Tenant's successor by foreclosure, as the case may be.

20.3 Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

20.4 Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

The provisions of this Section 20 shall survive the expiration or other termination of this Lease.

21. Trade Fixtures, Machinery and Equipment. Landlord agrees that if all rents due hereunder have been paid, all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant may be removed by Tenant, or its agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, lessors, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, lessor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, lessor, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, lessor, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

22. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and

effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements. Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (ii) that there are no uncured defaults in Tenant's performance.

23. General Provisions.

23.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease, including any action for declaratory or equitable relief, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and court costs in connection with said suit, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute, with such attorneys' fees and court costs to be fixed by the court.

23.2 Interest on Amounts Due. Any amounts due a party under this Lease, including, without limitation, Rent, shall accrue interest on the unpaid balance, from the date a court of competent jurisdiction enters a final judgment awarding such amount to the party, at the rate of 15% per annum or the maximum rate allowable under applicable law (whichever is less), compounded daily, until paid in full.

23.3 Transfer or Encumbrance of Landlord's Interest. Landlord shall not transfer or convey its interest in this Lease or in the Premises during the term of this Lease, without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or any rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall not take any actions that would cause the Premises (including without limitation, Landlord's fee simple interest in the Premises) to be encumbered in any manner whatsoever, nor take any action that would impair Landlord's fee simple title to the Premises without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion.

23.4 Captions; Attachments; Defined Terms.

23.4.1 The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

23.4.2 Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

23.4.3 The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

23.5 Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

23.6 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law, provided, however, that the overall intent and agreement of the parties as set forth in this Lease is not materially vitiated by the invalidity or unenforceability of the term or provision in question.

23.7 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona, and notice is hereby given of the applicability of A.R.S. § 38-511.

23.8 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements Lease, a form of which is attached hereto as Exhibit B.

23.9 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, including delivery by Federal Express or similar overnight courier, or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:	City of Tempe
	City Manager's Office
	31 E. 5th Street
	Tempe, Arizona 85281

With a copy to: City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant: ZarCalRes Tempe, LLC
9150 E Del Camino, Suite 118
Scottsdale, AZ 85258
Attention: Kent Chantung

With a copy to: Zarembo Group, LLC
14600 Detroit Ave, Suite 1500
Lakewood, OH 44107
Attention: Barbara VonBenken

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery by Federal Express or similar overnight or seventy-two hours after the postmark on the certified or registered mail, as the case may be.

23.10 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

23.11 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

23.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease. In the event Leasehold Mortgagee exercises its remedy of foreclosure or takes title to Tenant's leasehold estate in the Premises through deed-in-lieu of foreclosure or any other means, Leasehold Mortgagee shall have the right to do so without consent of Landlord and, from and after the time Leasehold Mortgagee takes such title, Landlord shall recognize Leasehold Mortgagee (and/or its successors and/or assigns) as the Tenant under this Lease.

24. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the buildings and other improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

25. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

ZARCALRES TEMPE, LLC, a Delaware limited liability company

By: ZarCalRes, LLC, a Delaware limited liability company, its Manager

By: Zarembo Multifamily, LLC, a Delaware limited liability company, its Manager

By: _____

Name: _____

Title: _____

[ACKNOWLEDGMENTS BEGIN ON NEXT PAGE]

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2011, before me, personally appeared Hugh L. Hallman, who acknowledged himself to be the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of Zaremba Multifamily, LLC, a Delaware limited liability company, Manager of ZarCalRes, LLC, a Delaware limited liability company, Manager of ZarCalRes Tempe, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

(Seal)

EXHIBIT A

THE PROPERTY

PARCEL NO. 1:

LOT 1, OF CENTERPOINT PLAZA THREE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 832 OF MAPS, PAGE 18.

Also known as:

UNITS 101; 201 THROUGH 213, INCLUSIVE; 301 THROUGH 309, INCLUSIVE; 401 THROUGH 415, INCLUSIVE; 501 THROUGH 509, INCLUSIVE; 516; 601 THROUGH 613, INCLUSIVE; 701 THROUGH 713, INCLUSIVE; 801-1 THROUGH 811-1, INCLUSIVE; 901-1 THROUGH 911-1, INCLUSIVE; 1001 - 1 THROUGH 1011- 1, INCLUSIVE; 1101-1 THROUGH 1111-1, INCLUSIVE; 1201-1 THROUGH 1211- 1, INCLUSIVE; 1301-1 THROUGH 1311-1, INCLUSIVE; 1401-1 THROUGH 1411-1, INCLUSIVE; 1501 - 1 THROUGH 1509-1, INCLUSIVE; 1601-1 THROUGH 1609-1, INCLUSIVE; 1701-1 THROUGH 1709-1, INCLUSIVE; 1801-1 THROUGH 1809-1, INCLUSIVE; 1901-1 THROUGH 1909-1, INCLUSIVE; 2001-1 THROUGH 2003-1, INCLUSIVE; 2101 - 1 THROUGH 2103-1, INCLUSIVE; 2201-1; 801-2 THROUGH 810-2, INCLUSIVE; 901-2 THROUGH 911-2, INCLUSIVE; 1001-2 THROUGH 1011-2, INCLUSIVE; 1101-2 THROUGH 1111-2, INCLUSIVE; 1201-2 THROUGH 1211-2, INCLUSIVE; 1301-2 THROUGH 1311-2, INCLUSIVE; 1401-2 THROUGH 1411-2, INCLUSIVE; 1501-2 THROUGH 1509-2, INCLUSIVE; 1601-2 THROUGH 1609-2, INCLUSIVE; 1701-2 THROUGH 1709-2, INCLUSIVE; 1801-2 THROUGH 1809-2, INCLUSIVE; 1901-2 THROUGH 1909-2, INCLUSIVE; 2001-2 THROUGH 2009-2, INCLUSIVE; 2101-2 THROUGH 2109-2, INCLUSIVE; 2201-2 THROUGH 2209-2, INCLUSIVE; 2301-2 THROUGH 2309-2, INCLUSIVE; 2401-2 THROUGH 2403-2, INCLUSIVE; 2501-2 THROUGH 2503-2, INCLUSIVE; 2601-2 THROUGH 2603-2, INCLUSIVE; 2701-2 THROUGH 2703-2, INCLUSIVE; 2801-2 THROUGH 2803-2, INCLUSIVE; 2901-2 THROUGH 2903-2, INCLUSIVE; AND 3001-2, CENTERPOINT PHASE 1 CONDOMINIUM, ACCORDING TO AMENDED AND RESTATED CONDOMINIUM DECLARATION RECORDED IN DOCUMENT NO. 2008-0237067, RE-RECORDED IN DOCUMENT NO. 2008-0265011 AND PLAT RECORDED IN BOOK 975 OF MAPS, PAGE 39, AND AFFIDAVITS OF CORRECTION RECORDED IN DOCUMENT NO. 2008-0234291, AND DOCUMENT NO. 2008-0364826, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNIT'S UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS AS SET FORTH IN SAID DECLARATION AND ON SAID PLAT.

PARCEL NO. 2:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR ACCESS, SURFACE DRAINAGE AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED IN RECORDING NO. 2001-0610791.

PARCEL NO 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN RECIPROCAL EASEMENT AGREEMENT RECORDED IN RECORDING NO. 2006-1693226.

PARCEL NO. 4:

A NON- EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND USE OF SUPPORT AREA AS SET FORTH AND DEFINED IN TIEBACK AND SHORING EASEMENT AGREEMENT RECORDED IN RECORDING NO. 2006-1693225.

EXHIBIT B

WHEN RECORDED, RETURN TO:

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ____ day of _____, 2011, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and ZARCALRES TEMPE, LLC, a Delaware limited liability company ("Tenant").

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated _____, 2011 ("Lease"), whereby the City leases to Tenant that real property described in Exhibit "A" attached hereto and by this reference incorporated herein, together with all rights and privileges appurtenant thereto, and all present and future improvements thereon (collectively the "Premises") for a term commencing on the Effective Date, as defined in the Lease, and ending on the _____ anniversary of the Effective Date. The Lease sets forth all terms and provision relative to the lease of the Premises by City to Tenant. Without limiting the generality of the foregoing, Tenant has the right to mortgage its leasehold interest and there are restrictions on the right of Landlord to transfer or encumber its interest in the Premises or the Lease.

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Premises that the City leases to Tenant the Premises, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Premises.

3. The Lease contains certain protections in favor of leasehold mortgagees, including without limitation, the following provision:

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

17.3.1 No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

17.3.2 If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

17.3.3 If Tenant fails to cure a default within the applicable cure period, then the Leasehold Mortgagee shall have the right for a period of sixty days after the later of written notice to the Leasehold Mortgage that Tenant has so failed to cure and the end of the applicable cure period to perform any term, covenant, or condition and to remedy any default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. Landlord agrees that the Leasehold Mortgagee shall not be required to pay default interest to effect a cure of any payments defaults by Tenant. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

17.3.4 In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

- (a) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults as are reasonably susceptible of cure

(subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(b) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (a) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (b) above, if and when such Default has been cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, a default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed a Default hereunder.

17.3.5 If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs 17.3.4(a) and (b) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

17.3.6 No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

4. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

5. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

ZARCALRES TEMPE, LLC, a Delaware limited liability company

By: ZarCalRes, LLC, a Delaware limited liability company, its Manager

By: Zarembo Multifamily, LLC, a Delaware limited liability company, its Manager

By: _____

Name: _____

Title: _____

[ACKNOWLEDGMENTS BEGIN ON NEXT PAGE]

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2011, before me, personally appeared Hugh L. Hallman, who acknowledged himself to be the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of Zaremba Multifamily, LLC, a Delaware limited liability company, Manager of ZarCalRes, LLC, a Delaware limited liability company, Manager of ZarCalRes Tempe, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

(Seal)

EXHIBIT A

THE PROPERTY

PARCEL NO. 1:

LOT 1, OF CENTERPOINT PLAZA THREE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 832 OF MAPS, PAGE 18.

Also known as:

UNITS 101; 201 THROUGH 213, INCLUSIVE; 301 THROUGH 309, INCLUSIVE; 401 THROUGH 415, INCLUSIVE; 501 THROUGH 509, INCLUSIVE; 516; 601 THROUGH 613, INCLUSIVE; 701 THROUGH 713, INCLUSIVE; 801-1 THROUGH 811-1, INCLUSIVE; 901-1 THROUGH 911-1, INCLUSIVE; 1001 - 1 THROUGH 1011- 1, INCLUSIVE; 1101-1 THROUGH 1111-1, INCLUSIVE; 1201-1 THROUGH 1211- 1, INCLUSIVE; 1301-1 THROUGH 1311-1, INCLUSIVE; 1401-1 THROUGH 1411-1, INCLUSIVE; 1501 - 1 THROUGH 1509-1, INCLUSIVE; 1601-1 THROUGH 1609-1, INCLUSIVE; 1701-1 THROUGH 1709-1, INCLUSIVE; 1801-1 THROUGH 1809-1, INCLUSIVE; 1901-1 THROUGH 1909-1, INCLUSIVE; 2001-1 THROUGH 2003-1, INCLUSIVE; 2101 - 1 THROUGH 2103-1, INCLUSIVE; 2201-1; 801-2 THROUGH 810-2, INCLUSIVE; 901-2 THROUGH 911-2, INCLUSIVE; 1001-2 THROUGH 1011-2, INCLUSIVE; 1101-2 THROUGH 1111-2, INCLUSIVE; 1201-2 THROUGH 1211-2, INCLUSIVE; 1301-2 THROUGH 1311-2, INCLUSIVE; 1401-2 THROUGH 1411-2, INCLUSIVE; 1501-2 THROUGH 1509-2, INCLUSIVE; 1601-2 THROUGH 1609-2, INCLUSIVE; 1701-2 THROUGH 1709-2, INCLUSIVE; 1801-2 THROUGH 1809-2, INCLUSIVE; 1901-2 THROUGH 1909-2, INCLUSIVE; 2001-2 THROUGH 2009-2, INCLUSIVE; 2101-2 THROUGH 2109-2, INCLUSIVE; 2201-2 THROUGH 2209-2, INCLUSIVE; 2301-2 THROUGH 2309-2, INCLUSIVE; 2401-2 THROUGH 2403-2, INCLUSIVE; 2501-2 THROUGH 2503-2, INCLUSIVE; 2601-2 THROUGH 2603-2, INCLUSIVE; 2701-2 THROUGH 2703-2, INCLUSIVE; 2801-2 THROUGH 2803-2, INCLUSIVE; 2901-2 THROUGH 2903-2, INCLUSIVE; AND 3001-2, CENTERPOINT PHASE 1 CONDOMINIUM, ACCORDING TO AMENDED AND RESTATED CONDOMINIUM DECLARATION RECORDED IN DOCUMENT NO. 2008-0237067, RE-RECORDED IN DOCUMENT NO. 2008-0265011 AND PLAT RECORDED IN BOOK 975 OF MAPS, PAGE 39, AND AFFIDAVITS OF CORRECTION RECORDED IN DOCUMENT NO. 2008-0234291, AND DOCUMENT NO. 2008-0364826, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNIT'S UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS AS SET FORTH IN SAID DECLARATION AND ON SAID PLAT.

PARCEL NO. 2:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR ACCESS, SURFACE DRAINAGE AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED IN RECORDING NO. 2001-0610791.

PARCEL NO 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN RECIPROCAL EASEMENT AGREEMENT RECORDED IN RECORDING NO. 2006-1693226.

PARCEL NO. 4:

A NON- EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AND USE OF SUPPORT AREA AS SET FORTH AND DEFINED IN TIEBACK AND SHORING EASEMENT AGREEMENT RECORDED IN RECORDING NO. 2006-1693225.